

**CITY OF FREDERICK
BOARD OF ZONING APPEALS
PROJECT STAFF REPORT**

April 28, 2015

PROJECT INFORMATION

AGENDA ITEM: C.
NAME OF PROJECT: 1201 North Market Street
TYPE OF PROJECT: Change of Nonconforming Use – Conditional Use
CASE NUMBER: ZBA15-178CU

PROPERTY OWNER: Stauffer Family Services LLC
ADDRESS: 1621 Opossumtown Pike
Frederick, MD 21701

**CONTRACT
PURCHASER/
APPLICANT:** New York, New York Salon, Inc.
C/O David Severn, Esq.
Offit Kurman P.A.

ADDRESS: 50 Carroll Creek Way, Suite 340
Frederick, MD 21701

PHONE NUMBER: 240-772-5114

**PROPERTY
LOCATION:** 1201 North Market Street
West Side of North Market Street, north of West
12th Street

REVIEWED BY: Jeffrey D. Love
DATE: April 21, 2015

PROPOSED ACTION: The Applicant seeks approval of a substitution of a
nonconforming use in accordance with §905(c).

EXHIBITS: Application with supplements
Ordinance 15-03
Registration of Nonconforming Use (06-582)

BACKGROUND INFORMATION

The subject property ("Property") is zoned R6 (Low Density Residential) and is also located within the Wellhead Protection Overlay (WHO). The Land Management Code (LMC) cites the R6 district as being intended to provide for residences in an urban residential environment with a maximum density of up to six (6) units per acre; uses permitted "by right" in the district include single family dwellings and parks. In addition, this district is intended to accommodate a complement of residential support uses normally utilized during the daily activities of residents, to protect these areas from the encroachment of incompatible uses and to guide development within the district to occur in a manner that complies with the Comprehensive Plan.

The WHO zone is intended to protect the public health, safety and welfare through the preservation of the ground water resources of community public water supplies. The boundaries of this zone are established based on proximity to City-owned wells. The provisions of LMC §743 establish performance standards and restrict certain uses and activities such as disposal of fuel/hazardous materials, underground storage tanks, etc. which could adversely impact ground water supplies.

The site is occupied by an 8,623 sf principal structure as well as a 6 bay garage and paved parking lot. The Property was previously under use as Stauffer Funeral Home and prior to that as the Dailey Funeral Home. Funeral homes are not permitted in the R6 district and the use of the property was determined to be legally nonconforming per the Registration of Nonconforming use completed in 2006 in accordance with §908 (Case #06-582).

Per §905(b), no lot or structure where a nonconforming use has ceased for one year or more shall again be put to a nonconforming use. The property owner has the burden of providing clear evidence to this effect. In order to pursue this application it was necessary to determine that the previously existing nonconforming use on the site was active on the Property within the past year. Based on the documentation provided by the Applicant, the site ceased to be utilized as a funeral home as of July 1, 2014.

The Applicant proposes to establish a new use on the Property which necessitates the review and approval of the Zoning Board of Appeals (ZBA) per §905 *Nonconforming Uses*; the new, proposed use being a Beauty/Hair Salon and Day Spa. This use is classified under the category, *Barber/Cosmetology* under Table 404-1, *Use Matrix*, and is permitted "by right" in the PB, NC, GC, DB, DBO, MU, and MXE districts. Therefore, the only option for establishing it in the R6 district is through the substitution of a nonconforming use provisions. Section 905 allows for the substitution of a nonconforming use when the criteria established for conditional use requests under §308(c) and §905(c)(4) have been met.

It is also noted that the Applicant has proposed a stairway addition at the rear of the proposed structure to accommodate a second means of ingress/egress per the life safety requirements of the City's Building Code. This is required as part of the change of use on the Property for the continued use of the upper floors and does not constitute an

intensification of a nonconforming use as it does not expand the use beyond the documented boundaries or limits of the previous use.

STAFF COMMENTS & ANALYSIS

Sections 203(c) and 308 of the City of Frederick Land Management Code allow the Zoning Board of Appeals to authorize conditional uses included the LMC only when the Board finds that all of the following conditions exist:

1. The proposed use is in harmony with the purpose and intent of the Comprehensive Plan and this Code.

Applicant responds: The Municipal Growth Element of the Comprehensive Plan advocates for the redevelopment of underutilized land within the City. The Proposed Use is a perfect example of a compatible, attractive re-use of land and buildings that will greatly benefit the City and its residents. The Economic Development and Community Character and Design Element of the Comprehensive Plan also supports reinvestment in existing infrastructure. The new jobs that will be created by the Proposed Use will help to implement Fiscal Element Policy FE2 of the Comprehensive Plan by encouraging growth that increases the City's non-residential tax base. Unlike residential development, the Proposed Use will not generate public school students, increase demand on City water and sewer facilities, parks or emergency services. Once renovated and subject to the Proposed Use, the Applicant's improvements to the Property will preserve and re-invigorate one of the oldest and grandest properties in the City and will further enhance the already attractive surrounding neighborhood.

The Property is in close proximity to Downtown Frederick and will be very convenient to its clients and the surrounding residential neighborhood. It will create jobs, increase the City tax roll and re-use the existing Property and its structures without redevelopment or disturbance to the area.

Staff responds: As noted, the Property is zoned R6 (Low Density Residential) and the most recent use of the Property, a funeral home, was determined to be legally nonconforming. The Applicant has proposed to replace the existing nonconforming use with a salon and day spa which is also not permitted in the R6 district. The substitution of one nonconforming use for another requires that the Applicant demonstrate compliance with the provisions of §905(c). These provisions are designed to ensure that the proposed use will have the same or lesser impacts on the surrounding community.

The 2010 Comprehensive Plan identifies the Property within the Low Density Residential land use category. In addition to the Comprehensive Plan policies presented by the Applicant, Land Use Policy 1, provides for the encouragement of "development to be compatible with the character of existing or planned development in the

vicinity”. It goes on further to discuss development of incentives and to remove disincentives for infill projects as well as supporting development that facilitates the integration of residential and non-residential land uses.

Based on the above, Staff finds that the substitution of nonconforming uses is consistent with the purpose and intent of both the Comprehensive Plan and the LMC.

2. The characteristics of the use and its operation on the property in question and in relation to adjacent properties will not create any greater adverse impact than the operation of any permitted use not requiring conditional use approval.

Applicant responds: The Proposed Use will not have any adverse impact on the adjacent properties.

It will not have any negative impact on adjacent properties or the surrounding neighborhood at this particular location in the R-6 zoning district above and beyond what it would generally in the zoning district. In fact, as a re-use of existing structures, it will be far less disruptive than if any new construction was required. Certainly, the Proposed Use will have much less of an impact on the adjacent properties than the existing non-conforming use as described herein.

*The Applicant has already undertaken extensive community outreach to neighboring property owners (see **EXHIBIT E** attached hereto) and plans to continue to address any concerns of owners of adjacent properties as they may arise. The Applicant has a 30 year track record of being a good neighbor and member of the community at its current location in the City. In addition to the significant improvements the Applicant will make to the Property, the Applicant will continue to be a good neighbor in the community at this new location.*

Staff responds: While the zoning restricts non-residential uses from locating in the district; the LMC contemplates that nonconforming uses will exist and allows for their continued use provided the parameters of Article 9 are observed. Through the evaluation of the substitution of nonconforming uses under the criteria provided in §905(c), the operation of a new nonconforming use is assured to not create greater adverse impacts than the legally nonconforming use already established in the neighborhood.

The proposed use is not intended to expand beyond the current boundaries of operation and the Applicant has provided supplemental information to address the impacts the proposed use will have on the neighborhood.

3. That the proposed activity will comply with all conditions and requirements set forth in this Code, including any specific standards established in Article 8 of this Code.

Staff responds: Unlike other conditional uses applications which involve a specific type of use in a particular zoning district, for example a Winery in the General Commercial (GC) district, a substitution of nonconforming use could apply to any number of uses and therefore, there are not “use specific” criteria. Instead, §905(c) establishes the specific requirements applicable to this type of conditional use request. They are as follows:

Per §905(c), the Zoning Board of Appeals may approve a substitution of nonconforming use with another nonconforming use as a conditional use provided that all of the following conditions and requirements can be met:

- a. **The applicant assumes the burden of proof and shall sufficiently present facts and the Board shall determine that it is physically or economically impracticable to change the use of the lot or parcel to conforming use. Absence of this requirement shall automatically require the Zoning Board of Appeals to deny the conditional use.**

Applicant responds: The Property contains 1.35 acres of land (178' x 330' +/-) and a large single family home of 7,066 square feet used as a funeral home with a rear garage and parking spaces. This is a very large lot for this area of the City with a very large house situated upon it. The primary structure was originally constructed in 1880 but it is not listed on the National Register or the City's historical properties inventory. In 2012, Stauffer Family Services, LLC purchased the Property from Robert E. Dailey, Jr. for One Million Dollars (\$1,000,000.00). The existing primary structure is in need of major renovations, regardless of what the ultimate use might be. These renovations greatly increase the costs that would be associated with transforming the Property back into a residential home. The economics of renovating and using the Property are far more practical for the Proposed Use.

A review of the information available on the Maryland State Department of Assessments and Taxation (“SDAT”) website, reveals that there was not a single sale of residential real estate in the same Tax Map area as the Property (Tax Map 0409) between November 12, 2013 and November 12, 2014 in which the purchase price paid was \$500,000.00 or more. Likewise, in the same Tax Map area, there was no commercial or non-residential sale of any real estate in the last year for which the purchase price was \$500,000.00 or more.

As such, the market for a single family home in the price range of the Property is weak, if not non-existent. Absent a continuation of the existing non-conforming funeral home use or a substitution of another non-conforming use, the Property is not desirable and at risk of falling into a state of decline due to lack of marketability. In light of the current market, the purchase price of the Property and the extraordinary costs of renovation,

maintenance and upkeep that accompany a home built in the late 1800s, the notion that the Property has any remaining useful life as a single family residential home in this market is economically impracticable at best. Any practical subdivision of the Property under its R-6 zoning classification would require the demolition of the house which is not a desired outcome for the Applicant or the City.

Staff responds: The return of the existing structure to a single family residential use as required by Code is complicated by the improvements existing on the Property. The improvements were designed to accommodate the funeral home business and do not readily lend themselves to a residential use. Removal of the large parking area, interior renovations, and upgrades necessary to return the use to a single family home are an extensive endeavor.

The Applicant has provided a scope of work and pictures outlining their proposal to update and repair the Property. It is clear that there are many items on the list which are part of regular maintenance that have to be completed such as a new roof, gutter replacements, wood trim replacements, and painting.

Other alternatives for use of the Property in accordance with the Code include the resubdivision of the lot. At approximately 1.35 acres the Property could be subdivided into multiple single family lots. Based on gross square footage alone, it may be possible to build eight new single family structures; however, this would require demolition of the existing structure and considerable resources to occur. Demolition of the structure would prompt a review in accordance with the demolition review provisions of §423 which could potentially result in the designation of a Historic Preservation Overlay (HPO) making demolition highly unlikely.

The Applicant's argument is couched in the necessity for substantial financial resources in order to return the structure to a well-maintained state. It is not suggested that a single-family dwelling is not possible, but that it is not practicable for such to occur given market conditions and funding. Nonresidential uses are typically able to secure larger amounts of funding and generate income to provide upkeep for extended periods of time.

- b. The proposed substitution nonconforming use shall meet the off-street parking, off-street loading, and other applicable requirements of this Code that would normally be required for the establishment of a use in a district that allows the proposed use.**

Applicant Responds: Consisting of 1.35 acres and with its existing commercial use as a funeral home, the Property has more than adequate off street parking and off-street

loading to accommodate the Proposed Use without exterior alterations to the paved areas. As shown on **EXHIBIT B** the Property, as currently configured, has an asphalt driveway entering off of North Market Street which loops all the way around the main building to the parking and loading areas in the rear. There is a second point of ingress and egress to the Property on West 12th Street. The Property front on the 20' alley to the rear (west). The Property is currently set up for use as a funeral home and as such, can accommodate parking far in excess of what may be needed under the Proposed Use. Similarly, the off-street loading at the Property exceeds the needs of the Proposed Use as the loading involved in the Proposed Use will not be as intense as required for the funeral home use.

As illustrated by the Parking Exhibit, the current layout of the on-site parking spaces is sufficient to meet the requirements of Section 607, Table 607-1 of the LMC for "Personal Services" (page 413). The requirement is a minimum of 1 space per 500 square feet of building/structure or maximum of 2 per 500 square feet. The primary structure on the Property contains 7,066 square feet (the "Primary Structure"); therefore the Applicant can have no more than 28 spaces on the Property for the Proposed Use. Currently, there are 26 surface parking spaces and 6 spaces in the garage. That is more than sufficient parking for the safe and convenient operational needs of the Applicant's Salon, its customers and the surrounding neighborhood.

The Parking Exhibit also reflects the Applicant's intention to install a 5-station bicycle rack to meet the requirements of the LMC.

Staff responds: The site is required to be parked at a minimum 1 space per 500 sf or a maximum of 2 spaces per 500 sf based on a Barber/Beautician use under Table 607-1 *Parking Schedule*. The total building square footage indicated is 8,623 sf per the scope of work documents provided. This information establishes a minimum parking requirement of 17 spaces. The Applicant is able to meet the minimum necessary through the existing parking provided on site and has an additional 15 spaces available. As noted by the Applicant, the installation of bike racks are necessary for compliance and a five space rack will meet this need.

The Applicant has not address the necessity for loading spaces for the site, but the existing parking lot configuration provides more than adequate opportunities for truck deliveries to the site to be accommodated.

- c. The Applicant shall show that the proposed change of nonconforming use shall be less objectionable in external effects than the existing nonconforming use with respect to:**

- 1. Traffic generation and congestion, including truck, passenger car and pedestrian traffic;**

Applicant responds: The Proposed Use will service customers almost entirely by appointment only and will not be open to walk-in customers. As such, the Applicant will be able to control and limit the number of customers patronizing the Property at all times. The Applicant expects to be open from 9:00 a.m. through 9:00 p.m., Monday through Friday and 9:00 a.m. through 5:00 p.m. on Saturday, with the business initially to be closed on Sunday. The Proposed Use will not create significant additional peak hour vehicular traffic and will not require large scale truck deliveries. The hours of operation for the Proposed Use will not conflict with daily school bus service.

The existing funeral home use creates significantly more (potentially peak hour) traffic as it entails a large number of people arriving for a viewing or other service, assembling and leaving at the same time. In terms of the generation of traffic, the Proposed Use will be far less objectionable than the existing non-conforming use because far fewer people will be coming and going from the Property at the same time and will be spread out through the day. The Property is located near Downtown Frederick and in a residential area thereby creating opportunities for more pedestrian traffic.

*The external effects of the Applicant's Salon as measured by vehicular and pedestrian traffic generation and congestion, will be less objectionable than the same external effects associated with the existing Stauffer's Funeral Home (the "**Existing Funeral Home**"). As set forth in the Traffic Memo, based on information provided by the Stauffer's, the hours of operation of the Existing Funeral Home were 10:00 a.m. to 10:00 p.m., 7 days per week. Services were generally held in the late morning to early afternoon with average attendance of 150 people. The Existing Funeral Home (8,623 square feet GFA) had an occupancy capacity of approximately 285 and could serve as many as 1,500 people over the course of a day. On average the Existing Funeral Home had ten (10) full time employees on site at a time.*

*The Traffic Memo is based upon an analysis of the Application (including the potential for future growth from 40 part-time and full-time employees as stated in the Application to 45 employees by 2021 of which approximately one-half (1/2) will be **part-time**), existing road and traffic conditions around the Property (North Market Street is an Urban Minor Arterial classification road), ITE 9th Edition Manual traffic for traffic projections by land use, the traffic generation history of the Applicant's existing business on Toll House Avenue derived from her customer service and appointment records, the capacity of the Primary Structure and its historical usage as the Existing Funeral Home¹.*

Based on this data, the Existing Funeral Home operations, unlike the Proposed Use, frequently included a large influx and exit of vehicular traffic to the Property during peak hours with services continuing into the evening and numerous vehicles idling in one location as part of processions to the cemetery after services. That will not be the case with the Applicant's Salon. The Traffic Memo evidences that overall the peak hour trips will be less with the Proposed Use (often considerably less) than the Existing Funeral

¹ The Traffic Memo also contrasts the greater amount of air pollution that is generated by several idling vehicles in one location as occurs with a typical funeral procession.

Home so the external effects of traffic generation and congestion will be less objectionable if the Application is approved.

Staff responds: The traffic count summaries provided by the Applicant identify the potential intensities between the previous funeral home use and the proposed use. While funeral home operations and employee numbers require fewer trips on a steady basis, viewings and other events at the funeral home can generate large numbers of vehicles and people at a given time. The Cosmetology use provides steadier numbers of trips based on the increased number of employees and customer appointments to the site.

Based on the information provided, the peak hour trips, when most community users would take vehicle trips, are significantly less with the proposed use. Large influxes of patrons to the site, as those associated with funeral viewings, may also create more impacts on the neighborhood due to the necessity of patrons to utilize on-street parking for overflow as the parking area does not provide an abundance of spaces for funeral operations. Funeral viewing attendees are also frequently unfamiliar with the local area and may meander through the surrounding neighborhood in finding their destination; whereas, regular customers at a barber/cosmetology use are likely to know the area and take more direct routes when arriving and departing. The barber/salon use is less intense when considering these issues.

2. Noise, smoke, dust, gases, heat, odor, glare or vibration;

Applicant responds: The Proposed Use is not expected to create any smoke, dust, gases, heat, odor, glare or vibration. The Applicant has owned and operated a substantially similar business at 808 Toll House Avenue, Frederick, Maryland 21701 for nearly 30 years and has never had an issue with any of these factors. The characteristics and operations of the existing funeral home non-conforming use, pose a higher likelihood of creating negative impacts than the Proposed Use. As such, the Proposed Use will be less objectionable than the existing non-conforming use.

Staff responds: Operations will be contained indoors and should not contribute to any of these nuisances. The proposed hours of operation are within typical business hours for a barber/salon and should not pose issues with the City's noise ordinances. The use must observe the noise limitations under §15-21.2 of the City Code for locations in a residential zoning district.

3. Storage and waste disposal;

Applicant responds: The Proposed Use is not expected to have any storage or waste disposal needs that would be more objectionable than the existing, non-conforming

funeral home use. For that reason, the Proposed Use will also not conflict with the purpose and intent of the WHO or its land use restrictions under Section 743 of the LMC.

Staff responds: Storage on the site is limited to the interior of the principal structure and the existing garage. No outdoor storage would be permitted in accordance with the previous use.

The Applicant will have to ensure responsible and legal means of waste disposal in accordance with City codes and ordinances. Outdoor storage of refuse has not been addressed. It is not known how the previous user stored refuse onsite. Any outdoor refuse storage must be conducted in accordance with §613 of the LMC. It is suggested that any refuse storage is located within the structure and that refuse pickup for the site be conducted within the site to avoid large amounts of refuse being picked up curbside.

4. Appearance.

Applicant responds: As stated in the Application, the Applicant proposes to substantially renovate the exterior of the Primary Structure and the landscaping features on the Property to restore and improve it to its former attractiveness. The Exterior Improvements Exhibit provides a pictorial view from all elevations of the existing condition of the Primary Structure together with a planned "Scope of Work" representing the Applicant's proposed improvements to those portions of the Primary Structure and grounds. This exhibit also illustrates the enormous investment that will be required to restore, rehabilitate and re-use the Property that will far exceed its fair market value as a single family residence.

While not directly relevant to the Application, the Floorplans provide a concept of the extensive interior renovations to the Primary Structure that will also be required for the Applicant's Salon.

The Applicant intends to substantially renovate the exterior of the primary structure and the landscaping features on the Property to restore and improve it to its former attractiveness. The appearance of the Property will be greatly improved over its current state. Certainly, the appearance of the Property after the Applicant's proposed renovations will be less objectionable than the current state of the Property under the existing non-conforming use. Applicant Mary Louise Riser has a stellar track record of restoring and maintaining historic properties in the City. Applicant Riser fully restored, renovated and maintains her current residence in a historic home in the City. No exterior changes are planned for the parking areas, driveways or other features beyond landscaping and cosmetic improvements.

Staff responds: Staff concurs with the Applicant's assessment. The Applicant's proposed restoration of the Property will greatly improve the current disposition of the Property. The Property currently is unkempt due to

lack of utilization and there are many repairs and items of upkeep that need to be completed.

The appearance of the site under the new use will not expand beyond its current limits. With the exception of the proposed stairway addition to meet ingress/egress requirements, the site will look much the same as it currently does.

- d. The Applicant must provide guarantees as deemed necessary by the Board to ensure that no hazardous or obnoxious effluent will be released into the air, water or onto the ground and that all wastes and by-products will be disposed of in a safe and healthful manner.**

Applicant responds: The Applicant has conducted its business in the City at 808 Tollhouse Avenue for nearly 30 years. During that time, the Applicant has never had any issues with any hazardous or obnoxious effluent being released into the air, water or ground. The Applicant has always made sure that any and all wastes and by-products are disposed of in a safe and healthful manner and will continue to do so with the Proposed Use.

Staff responds: Staff believes the Applicant understands the requirement and compliance with existing City codes and ordinances will ensure no unwanted effects.

- e. The Board may authorize changes to a nonconforming use or substitution of one nonconforming use for another only upon specific findings that the resulting activity or use shall be equally or more compatible with permitted uses in the district.**

Applicant responds: The Proposed Use is more compatible with other uses permitted in the R-6 zoning district than the existing funeral home non-conforming use. As detailed above, the Proposed Use will receive customers almost entirely by appointment only, and there is no risk of a large number of customers descending upon or exiting the Property at any one time. Conversely, the existing non-conforming use only services customers en masse, as a large number of people assemble to attend viewings or other services and traverse to a funeral, potentially causing congestion and traffic issues in what remains primarily, a residential neighborhood. The Proposed Use will serve customers, many of whom who live in the neighborhood, thereby supporting existing residential land use with a compatible personal service business.

Staff responds: In assessing the proposed use's compatibility with the surrounding community and other uses permitted in the district versus that of the most recent use, Staff has compared the various districts in which each are permitted. Both funeral homes and barber/cosmetology uses permitted in all of the same districts: PB, GC, DB, DBO, MU, and MXE. Funeral Homes are permitted as a conditional use in the PB

district whereas, barber/cosmetology uses are permitted "by right." While neither is permitted in the residential zoning district, this similarity does reflect a general consistency between the two uses in terms of impact in that they are deemed suitable in the same areas. Further, the allowance of the proposed use in the PB district "by right" versus as a conditional use as is the case with Funeral Homes also suggests that the proposed use is of a less intense quality.

The responses to the criteria above demonstrate the same or lesser impacts of the proposed use in comparison to the most previous use of the Property. On this basis, the Board may decide the proposed use to represent an equally or more compatible use in the R6 district.

Lastly, as described in Section 312(e) of the LMC, in the decision making process the Zoning Board of Appeals should consider the following to the extent that they apply to the application:

- 1) The purpose, application, interpretation and standards of the LMC;
- 2) The applicable standards established in Articles 8 and 9 of the LMC;
- 3) The applicable legal standards;
- 4) The orderly growth and improvement of the neighborhood and the community;
- 5) The most appropriate use of land and structures in accordance with the Comprehensive Plan;
- 6) Facilities for sewer, water, transportation, and other services and the ability of the City/County to supply these services;
- 7) The limitations of firefighting equipment and means of access for fire and police protection;
- 8) The effect of such use on the peaceful enjoyment of people in their homes
- 9) The number of people residing, working, or studying in the immediate area in order to prevent overcrowding or overconcentration of similar uses;
- 10) The type, character, and use of structures in the vicinity especially where people are apt to gather in large numbers such as schools, churches, theaters, hospitals and the like;
- 11) Traffic conditions including pedestrian facilities and parking facilities;
- 12) The preservation of cultural and historic landmarks;
- 13) The conservation of property values;
- 14) The effect of odors, dust gas smoke fumes vibration glare or noise on surrounding properties;
- 15) The contribution that the building, use or addition would make to towards the deterioration of areas and neighborhoods;
- 16) The objectives of the forest conservation ordinance.

STAFF RECOMMENDATION

FINDINGS OF FACT

- The Property is located in the R6 (Low Density Residential) district and the WHO district.
- The Property was most recently used as a funeral home which operated within the last 12 months, ceasing operations on July 1, 2014.
- The funeral home was determined to be a legal nonconforming use through a Registration of Nonconforming Use in accordance with §908.
- The Applicant proposes to establish a new use on the Property as *Barber/Cosmetology* use which is also prohibited in the R6 zoning district.
- A use not permitted in the R6 district may be established in place of an existing nonconforming use as a conditional use request when the conditions and requirements under §905 are met.

STAFF RECOMMENDATION

Based upon the findings of fact and the information provided in this report, Staff recommends approval of the conditional use request for the substitution of a nonconforming use in accordance with §308 and §905 finding that:

1. The proposed use is in harmony with the policies and regulations found in both the 2010 Comprehensive Plan and the Land Management Code (LMC).
2. The proposed use of the Property in question may create additional impacts such as increase pedestrian or vehicular traffic and parking needs than a permitted residential use; however, compliance with the criteria established under §905(c) of the LMC will ensure that the proposed use will not create a greater adverse impact than the existing legally nonconforming use permitted to remain by right in the R6 district.
3. The proposed use of the Property complies with the provisions of Article 9, §905(c) entitled *Change of Nonconforming Use* based on the following:
 - a. The Applicant has demonstrated that reuse of the Property for residential purposes is physically and economically impracticable.
 - b. The proposed use meets and exceeds the minimum number of off-street parking spaces, loading, and bicycle spaces.
 - c. The Applicant's testimony has demonstrated that external effects of the use will be less intense and less objectionable, are limited and are of a lesser degree than the existing use.
 - d. The Applicant has provided the guarantees necessary that no obnoxious or hazardous effluent will be discharge by the use and that wastes or by-products will be safely disposed of in a safe and healthful manner.
 - e. The responses to the criteria above demonstrate the same or lesser effects of the proposed use in comparison to the existing use allowing the Board to substitute one nonconforming use for another.

With the following conditions of approval:

1. In accordance with §905, the Applicant must apply for and receive a zoning

certificate/building permit lawfully establishing the use of property no later than June 30, 2015 or the legal nonconforming use of the Property will cease.

THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN

ORDINANCE NO: G-15-03

<u>LEGISLATIVE HISTORY</u>	
<u>PLANNING COMMISSION</u>	
PUBLIC HEARING:	January 15, 2015
RESOLUTION SUBMITTED TO MAYOR & BOARD:	March 4, 2015
<u>MAYOR & BOARD OF ALDERMEN</u>	
WORKSHOP:	March 4, 2015
PUBLIC HEARING:	March 19, 2015

AN ORDINANCE concerning

The change of nonconforming uses

FOR the purpose of amending the criteria for which the Zoning Board of Appeals may approve the substitution of one nonconforming use for another nonconforming use.

BY repealing and reenacting, with amendments,

Section 905
Appendix A, "Land Management Code"
The Code of The City of Frederick, 1966 (as amended)

SECTION 1. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Section 905 of the Land Management Code, Appendix A of The Code of The City of Frederick, 1966 (as amended), be repealed and reenacted, with amendments, as shown (attached).

Sec. 905 *Nonconforming uses*

(a) ***

(b) ***

(c)

(1) ***

(2) ***

(3) ***

(4) *Decision-making Criteria*

If a use, activity or construction is subject to subsection (c), the Zoning Board of Appeals shall consider the following:

A. In addition to the criteria for approval of a conditional use permit, the Zoning Board of Appeals shall find that:

1. The applicant assumes the burden of proof and shall sufficiently present facts and the Board shall determine that it is physically or economically [impossible] impracticable to change the use of the lot or parcel to conforming use. Absence of this requirement shall automatically require the Zoning Board of Appeals to deny the conditional use.
- [2. The Board shall also find that the new use is of an equally or more restricted use as indicated in the district regulations in Article 4; and]
- [3]2. The proposed substitution nonconforming use shall meet the off-street parking, off-street loading, and other applicable requirements of this Code that would normally be required for the establishment of a use in a district that allows the proposed use.
- [4]3. The applicant shall show that the proposed change of nonconforming use shall be less objectionable in external effects than the existing nonconforming use with respect to:
 - a. Traffic generation and congestion, including truck, passenger car and pedestrian traffic;
 - b. Noise, smoke, dust, gases, heat, odor, glare or vibration;
 - c. Storage and waste disposal; and
 - d. Appearance.
- [5]4. The applicant must provide guarantees as deemed necessary by the Board to ensure that no hazardous or obnoxious effluent will be released into the air, water or onto the ground and that all wastes and by-products will be disposed of in a safe and healthful manner.

B. The Board may authorize changes to a nonconforming use or substitution of one nonconforming use for another only upon specific findings that the resulting activity or use shall be equally or more compatible with permitted uses in the district. [In a Residential or DR district, no use prohibited in an RO, PB, NC or GC district shall be

authorized. In an RO, PB, NC or GC district, no use prohibited in an M1 district may be authorized.]

SECTION 2. In the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

SECTION 3. This ordinance shall take effect on March 29, 2015 and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

Note: Underlining indicates material added.

[Brackets] indicates material deleted.

*** indicates no change.

APPROVED: March 19, 2015

PASSED: March 19, 2015

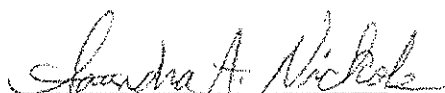


Randy McClement, Mayor



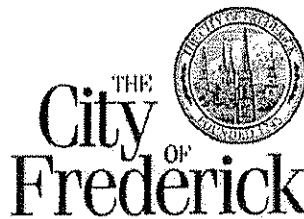
Randy McClement President,
Board of Aldermen

Approved for Legal Sufficiency:



City Attorney

William J.
Holtzinger
Mayor



Aldermen
Marcia A. Hall
President Pro Tem

David "Kip" Koontz
Alan E. Imhoff
C. Paul Smith
Donna Kuzemchak
Ramsburg

October 17, 2006

Robert E. Dailey & Son Funeral Homes, P.A.
C/o Mr. Robert E. Dailey, Jr.
1201 North Market Street
Frederick, MD. 21701

Re: REGISTRATION OF NONCONFORMING USE: RNU06-582, Robert E. Daily & Son Funeral Homes, P.A.

Dear Mr. Dailey,

This letter is to inform you that in accordance with Section 908 of the Land Management Code (LMC), your application for the registration of a nonconforming use has been accepted by the City of Frederick.

It has been established that the property identified as the Robert E. Daily & Son Funeral Homes, P.A., located at 1201 North Market Street, is currently zoned R6, Medium Density Residential. The property is also located within the Wellhead Protection Overlay (WHO). The WHO district is established in areas where development must be regulated in a manner such as to protect ground water resources to ensure a safe and healthful drinking water supply.

The property is currently the site of an active funeral home with associated cremation services and pre-need funeral sales. Per Section 404-1 of the LMC, this type of facility is considered a use permitted by right in the General Commercial (GC), Downtown Business (DB), Downtown Business Office (DBO), and Mixed Employment (MXE) zoning districts. In addition, funeral homes with an associated crematorium are permitted as conditional uses within the Professional Business (PB) and MU (Mixed Use) zoning districts. Therefore, the existing use is not permitted within the R6 district.

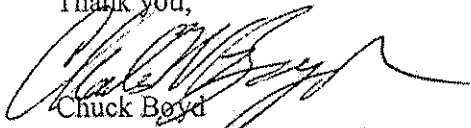
In accordance with the letter provided, dated August 14, 2006, the existing use has been located on this site since 1953. Prior to the adoption of the LMC, the site was zoned R-3 which was also considered a medium, density residential zoning district. Under the 1986 Zoning Ordinance, funeral homes were also not permitted within the residential zoning districts.

In conclusion, the Planning Department has found that the existing use at 1202 North Market Street is considered nonconforming and is permitted to persist in accordance with Section 905 of

the LMC. Should the operation of the nonconforming use cease for one year or more, the existing lot/structure shall not be returned to a nonconforming use.

If you have any additional questions or concern pertaining to this application, please feel free to contact me.

Thank you,

A handwritten signature in black ink, appearing to read 'Chuck Boyd', written over the printed name.

Chuck Boyd
Deputy Director of Planning
140 West Patrick Street
Frederick, MD. 21701
cboyd@cityoffrederick.com

For Official Use Only	
Registration Number:	06-572
Application Fee	\$ NA
Date Submitted:	10/2/06
Determination Letter	10/17/06

Planning Department * 101 N. Court Street * Frederick, Maryland 21701 *
301.694.1499

REGISTRATION OF NONCONFORMING USE

Please legibly print or type the following application in its entirety. Incomplete applications will not be accepted. Submit the three (3) copies of this registration, and any supporting information as required in Section 908 of the Land Management Code (LMC).

OWNER INFORMATION	
Contact Name:	Robert E. Dailey, Jr.
Firm/Company:	Robert E. Dailey & Son Funeral Homes, P.A.
Address:	1201 North Market Street, Frederick, MD 21701
Phone:	301-662-5966 email: daileyfuneralhome@att.net
APPLICANT INFORMATION - OWNER'S AFFIDAVIT MUST BE SUBMITTED WITH APPLICATION (IF DIFFERENT FROM THE OWNER'S INFORMATION)	
Name:	
Firm/Company:	
Address:	
Phone:	email:

All correspondence will be sent to the owner. If the applicant also wishes to receive a copy, please check box: ☐

PROJECT INFORMATION	
Project Location:	1201 North Market Street, Frederick, MD 21701
(Street Address)	
Current Zoning:	R-6 Current Name/Use: Robert E. Dailey & Son Funeral Homes, PA
Description of Current Use:	
Administrative Offices for Robert E. Dailey & Son Funeral Homes, P.A. Active Funeral Home, Cremation Services, & Pre-Need Funeral Sales	